would be called upon to pay. He should be released on this single ground, leaving creditor and principal to work out their rights between themselves just as if there had been no surety.

REMOVAL OF CAUSES—SUIT BROUGHT IN COURT OF STATE OF WHICH NEITHER PARTY WAS AN INHABITANT.—A citizen of one state sued a citizen of another state in a state court of a third state. *Held,* that the defendant might remove the cause to the federal court for the district within which the suit was pending. *M. Hohenberg & Co. v. Mobile Liners, Inc.* (1917, S. D. Ala.) 245 Fed. 169.

An alien sued a citizen of Pennsylvania in a state court of Ohio. *Held,* that the defendant might remove the cause to the federal court for the district of Ohio within which the suit was pending. *Keating v. Pennsylvania Co.* (1917, N. D. Oh.) 245 Fed. 155.

An assignee of an alien sued a citizen of New Jersey in a state court of New York. *Held,* that the defendant could not remove the cause to the federal court for the District of New Jersey. *Ostrom v. Edison* (1917, D. N. J.) 244 Fed. 228.

The existing confusion on this general subject has arisen from the decision in *Ex parte Wisner* (1905) 203 U. S. 449, 27 Sup. Ct. 150. A provision of the federal Judiciary Act of 1887, as amended in 1888 (substantially re-enacted in sec. 51 of the Judicial Code of 1911), forbade the bringing of any civil suit in a federal district court in any district other than that of which the defendant was an inhabitant, except that where jurisdiction was founded solely on diversity of citizenship, the suit might be brought in the district of residence of either plaintiff or defendant. It was held in the *Wisner* case that this limitation applied also to removal, and that a suit between citizens of different states could not be removed to a court in which it could not originally have been brought. Though modified in one respect by *In re Moore* (1907) 209 U. S. 490, 28 Sup. Ct. 585, and though its soundness has been doubted by lower federal courts, the *Wisner* case has never been overruled. The *Hohenberg* case *supra* is directly in conflict with that decision, which is not noticed in the opinion, and no other authorities are cited. Section 29 of the Judicial Code, dealing with the procedure on removal, provides expressly and exclusively for removal to the federal court for the district in which the suit is pending. From this section, and the decision in the *Wisner* case, it apparently results that when a citizen of one state sues a citizen of another in a state court of a third state, the suit cannot be removed at all. There is, however, some authority for disregarding the limitation apparently imposed by section 29, and allowing the defendant to remove to the federal court in the district in which he resides. See authorities on both sides collected in *Eddy v. Chicago & N. W. Ry Co.* (1915, W. D. Wis.) 226 Fed. 120, 126.

Where suit is brought in a state court by an alien against a citizen in a state of which the latter is not an inhabitant, a similar conflict has arisen, both on the question of removal to the federal court in the district where the suit is pending, and on the question of removal to the district of the defendant's residence. Authorities on the former question are collected in the *Keating* case, *supra,* and on the latter in the *Ostrom* case, *supra.* On the one hand some courts have assumed that the rule of the *Wisner* case should be extended to suits to which an alien is a party, and that since under section 51 an alien is not entitled to sue a citizen in the federal court of any district except that where the defendant resides, such a suit cannot be removed to the federal court of any other district. It then seems to follow from the provisions of section 29 that when the suit is brought in a court of a state where the defendant does not reside it is not removable at all. This was the practical result of the decision in

the *Ostrom* case, since, under the previous decisions of the District Court for the Southern District of New York, the case was not removable to that court. The view taken in the *Keating* case, however, is that the language of section 51 is wholly inapplicable to a case where an alien is a defendant, that an alien may be sued by a citizen in the federal court of any district where he may be found, and that if section 51 would not prevent his being sued by a citizen in the federal court of a given district, it will not prevent his being brought into the same court by the removal of a suit which he has first instituted in the state court. That an alien may be sued in the federal courts in whatever district he may be found was settled by *In re Hohorst* (1893) 150 U. S. 653, 14 Sup. Ct. 221, and *Barrow S. S. Co. v. Kane* (1898) 170 U. S. 100, 18 Sup. Ct. 526. The reasoning of the *Keating* case seems sufficient to distinguish *Ex parte Wisner*, and in view of the criticism which that case has received and the confusion it has caused, the courts would seem justified in limiting its doctrine as narrowly as possible. It is to be hoped that Congress or the Supreme Court will shortly clear up the uncertainty in which the whole subject is involved.

STATUTE OF FRAUDS—ORAL CONTRACT TO DEVISE—EFFECT OF PART PERFORMANCE.—The plaintiff and her stepfather in 1865 entered into an oral agreement with the intestate, whereby the latter agreed to adopt the plaintiff and to make her sole heir, in consideration of having the control and custody of her and obtaining her obedience and services as a daughter. The plaintiff fully performed, though she was never legally adopted, and no will was made. Prior to 1905 in California an agreement of this character was not required to be written. *Held*, that the plaintiff was the equitable owner of all the property left by the intestate. *Steinberger v. Young* (1917 Cal.) 165 Pac. 432.

The deceased in consideration of the plaintiff's care and affection orally agreed to devise and bequeath to her the bulk of his estate. He died intestate, leaving an estate of which about one-half was realty. *Held*, that the contract, though not within the statute of frauds as an agreement not to be performed within a year, was within the statute as an agreement for sale of realty, since the deceased might have performed by devising real estate; that the doctrine of part performance had no application, this being an action at law, and that recovery could be had only in a quasi-contractual action for the value of the services rendered; also, that the statute of limitations did not begin to run against such quasi-contractual action until the death of the deceased. *Quirk v. Bank of Commerce & Trust Co.* (1917, C. C. A. 6th) 244 Fed. 682.

The validity of contracts to bequeath or devise is discussed above in COMMENTS, p. 542. As to the effect of the statute of frauds, *Steinberger v. Young* follows the former California rule, which was changed by statute in 1905. *Roger v. Schlotterback* (1914) 167 Cal. 35, 138 Pac. 728; see, 18 COLUMBIA L. REV. 95. The federal case is in accord with the more usual rule that the statute of frauds applies to a contract of this nature where part of the promisor's estate consists of realty. Some courts hold, however, that the equitable doctrine of part performance is applicable and is sufficient to take the case out of the statute where the promisee, relying upon a promise of payment by will, has rendered services of a special character or has otherwise performed in such a manner as to make it inequitable not to enforce the contract. *Svanburg v. Fosseen* (1899) 75 Minn. 350, 78 N. W. 4; *Teske v. Dittberner* (1903) 70 Neb. 544, 98 N. W. 57. This is opposed to the better reasoned rule stated in the leading English case, that part performance is sufficient only when the acts relied on are such as unequivocally point to the existence of a contract for the conveyance of real estate, such as the entering into possession thereof, and hence that the rendering of services does not constitute part performance sufficient to take the